

ORDINANCE NO. 2013-

AN ORDINANCE (1) AMENDING PROVO CITY CODE SECTION 9.32.140 TO ALLOW PRIVATE PROPERTY OWNERS TO INITIATE A NON-CONSENSUAL BOOT OR TOW OF A MOTOR VEHICLE ON OR FROM THEIR PROPERTY BY CONTRACT RATHER THAN BY DIRECT AUTHORIZATION ONLY WHEN USING A PROVO CITY CERTIFIED TOWING OR PARKING ENFORCEMENT BUSINESS AND MEETING OTHER REQUIREMENTS; (2) SPECIFYING THE REQUIREMENTS TO BECOME A PROVO CITY CERTIFIED TOWING OR PARKING ENFORCEMENT BUSINESS; AND (3) AMENDING PROVO CITY CODE SECTION 6.08.040(2)(j) AND RENUMBERING PROVO CITY CODE SECTION 9.32.140 TO RECODIFY SECTION 9.32.140 AS PROVO CITY CODE SECTION 9.31.110.

WHEREAS, the booting and towing of motor vehicles is undertaken at all hours of the day and night and can leave motorists and their passengers, including small children, stranded and vulnerable; and

WHEREAS, Utah State Code § 41-6a-1407 provides that a person may not remove an unattended vehicle without prior authorization of a peace officer, a law enforcement agency, a highway authority having jurisdiction over the highway on which there is an unattended vehicle, or the owner or person in lawful possession or control of the real property where the vehicle is located; and

WHEREAS, until 2005, Provo City Code required all non-consensual booting and towing of motor vehicles from private property to be initiated by the property owner; and

WHEREAS, in 2005 Provo City amended its Code to allow the non-consensual towing of a motor vehicle from private property without the property owner's involvement if the property owner has entered into a contract with a towing or parking enforcement business and the provisions of the contract were consistent with the provisions of Section 9.32.140; and

WHEREAS, since amending its Code to allow towing and parking enforcement operators to tow and boot in accordance with a contract without property owner involvement, complaints and concerns regarding non-consensual towing having increased; and

WHEREAS, towing and parking enforcement operators often hire employees on a commission basis to patrol parking lots, which creates a financial incentive on the part of employees to tow and boot in circumstances where towing and booting may not always be in the public or property owner's interest; and

WHEREAS, it is proposed that Section 9.32.140 of the Provo City Code be amended to remove the ability for private property owners in Provo City to initiate a non-consensual tow or boot of a motor vehicle on or from their property via a contract with a towing or parking enforcement company, unless the property owner uses a Provo City Certified Towing or Parking Enforcement Business and meets other requirements; and

WHEREAS, Provo City desires to specify the minimum requirements to become a Provo City Certified Towing or Parking Enforcement Business; and

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WHEREAS, for codification purposes it is recommended that Provo City Code Section 9.32.140 of Chapter 9.32 Miscellaneous Traffic Provisions, dealing with parking and towing matters, be renumbered and re-codified as section 9.31.110 of Chapter 9.31 Parking Regulations; and

WHEREAS, it is also recommended that Section 6.08.040(2)(j) be amended to correct references to Section 9.32.140 due to the renumbering of that Section; and

WHEREAS, on November 19, 2013 and December 3, 2013, the Provo City Municipal Council held duly noticed public meetings to ascertain the facts regarding this matter, which facts are found in the meeting records; and,

WHEREAS, after considering the facts and comments presented to the Municipal Council, the Council finds: (i) the Provo City Code should be amended as described herein; and (ii) such amendments are in the best interests of the residents of Provo City and reasonably further the health, safety and general welfare of the citizens of Provo City.

NOW, THEREFORE, be it ordained by the Municipal Council of Provo City, Utah, as follows:

PART I:

Section 6.08.040(2)(j) and Section 9.32.140 of the Provo City Code are hereby amended and Section 9.32.140 is renumbered and recodified as Provo City Code Section 9.31.101 as follows:

**6.08.040. License - Issuance and Renewal Conditions.**

(1) Upon receipt of a complete application, a business license may be issued to a business which conducts towing or parking enforcement operations and which has a principal place of business within the corporate limits of Provo City upon proof that the applicant has met and will continue to meet the requirements set forth in Subsection (2) of this Section.

(2) The holder of a business license authorizing towing or parking enforcement operations shall continuously conform to the following conditions:

...

(j) provide competent evidence that the licensee is in compliance with applicable regulations set forth in Section [9.31.110](#), Provo City Code, and

...

**9.31.110. Towing and Parking Enforcement Operations.**

- (1) The definitions set forth in Section 6.08.010, Provo City Code, shall apply to this Section.
- (2) An owner or a person in lawful possession or control of real property may, to the extent authorized by this section, tow away or boot any unauthorized vehicle located on the property. An unauthorized vehicle is any vehicle parked or stopped in violation of private property parking regulations which govern parking for authorized tenants and visitors or which restrict parking in a loading zone, handicapped zone, fire lane, or a no parking zone.
- (3) No person may conduct a towing or parking enforcement operation unless:

92 (a) authorized by the owner of the private property on which the vehicle is located, or the  
93 owner's agent, or  
94 (b) requested by a peace officer or by an order of a person acting on behalf of a law  
95 enforcement agency.

96 (4) Except as otherwise ordered by a peace officer or a person acting on behalf of a law enforcement  
97 agency, after performing a towing operation without the vehicle owner's knowledge, the tow operator  
98 shall report the towing of the vehicle to the Provo City Police Dispatcher within the soonest of one (1)  
99 hour or immediately upon arriving at the place of storage or impound of the vehicle using the current  
100 published non-emergency telephone number of the Provo Police Department. The report shall include:  
101 (a) the vehicle's description, including its vehicle identification number and license number or  
102 other identification number issued by a state agency;  
103 (b) the name of the person, firm or corporation impounding or towing the vehicle;  
104 (c) the name of the person who requested removal of the vehicle;  
105 (d) the date, time, and location of the vehicle's removal;  
106 (e) reason(s) for removal of the vehicle;  
107 (f) the location where the subject vehicle will be kept; and  
108 (g) a telephone number, staffed twenty-four (24) hours a day, which an owner can call to  
109 arrange for release of the vehicle.

110 (5) No person may conduct a towing or parking enforcement operation at a parking lot having four (4) or  
111 more parking spaces other than on a vehicle which has been continuously parked in such a lot for more  
112 than seventy-two (72) hours, unless:  
113 (a) "no parking" areas, restricted parking spaces, and visitor parking spaces, if any, are clearly  
114 marked with signage installed in such a manner as to provide adequate notice to those utilizing  
115 the parking area, including marking of the boundaries between the subject parking lot and any  
116 adjoining parking lot owned by another person; and  
117 (b) a conspicuous sign posted at, or immediately adjacent to, each entrance to the property  
118 provides notice that unauthorized vehicles may be towed from the parking lot or booted. Each  
119 such sign shall:  
120 (i) be at least eighteen (18) inches by twenty-four (24) inches in size;  
121 (ii) give warning, in large reflective lettering, that unauthorized vehicles may be towed  
122 or booted;  
123 (iii) give the name and telephone number of business(es) authorized to conduct a  
124 towing or parking enforcement operation on the property;  
125 (iv) state the fees charged for towing and parking enforcement operations; and  
126 (v) be posted within approximately five (5) feet of each entrance to a parking lot.  
127 (A) For purposes of this Subsection, a parking lot entrance shall mean any access  
128 allowing the entrance or exit of a vehicle between a private parking lot and a  
129 City street unless such access is not the property of the parking lot owner. In  
130 such case, the parking lot entrance shall mean:  
131 (I) the intersection of the parking lot property line and the property line  
132 of the access point; or  
133 (II) any privately owned road connected to a public right-of-way leading  
134 to the entrance of a parking lot located on private property.  
135 (B) A sign posted directly over a driveway leading to an underground lot shall be  
136 deemed to meet the location requirements of this Subsection.

137 (C) If signs cannot be posted within five (5) feet from the entrance to a parking  
138 lot for reasons of practical difficulty (such as the necessity of drilling a hole  
139 through concrete, removing a tree or shrubs, or because of an immediately  
140 adjacent private driveway not owned by the owner of the parking lot), a sign  
141 may be placed as close as reasonably practicable to the parking lot entrance.  
142 However, no sign shall be further than thirty (30) feet from the edge of the curb  
143 that borders the private property.

144 (6) No person may conduct a towing or parking enforcement operation regarding a vehicle located on  
145 private property unless:

146 (a) the owner of the subject real property or the owner's agent:  
147 (i) conforms to the requirements of Subsections (6)(b)(i) and (7) of this Section;  
148 (ii) discloses in writing to each tenant of the property when the tenant first occupies the  
149 property:

- 150 (A) the rules which govern the use of parking areas;
- 151 (B) that parking a vehicle in violation of such rules may subject the vehicle to a  
152 towing or parking enforcement operation; and
- 153 (C) that the tenant may contest a towing or parking enforcement operation as  
154 provided in this Chapter;

155 (b) the towing or parking enforcement business conducting the operation:  
156 (i) except as otherwise provided in Subsection 9.31.110(7), receives from the property  
157 owner or the owner's agent, who shall not be affiliated in any way with the towing or  
158 parking enforcement business, a written or telephonic request for each towing or  
159 parking enforcement of a particular vehicle;;  
160 (ii) posts a copy of the towing or parking enforcement business's fee schedule in a  
161 prominent place at the location where vehicles are released from storage; and  
162 (iii) maintains personnel authorized to release any vehicle to its owner twenty-four (24)  
163 hours each day and who can respond within one (1) hour of a request for release of a  
164 vehicle;

165 (c) the towing or parking enforcement business employee who conducts, or attempts to  
166 conduct, a towing or parking enforcement operation:

- 167 (i) wears either:  
168 (A) a readily identifiable shirt, blouse, or other top article of clothing with the  
169 name of the business and the first name of the employee contained thereon  
170 and readable from a distance of six (6) feet; or  
171 (B) a prominently visible identification badge on the front of employee's  
172 clothing with the name of the business and the first name of the employee  
173 contained thereon and readable from a distance of six (6) feet;

174 (ii) possesses evidence of:  
175 (A) either (I) a written or telephonic towing or parking enforcement request  
176 from the property owner or the owner's agent, or (II) the contract required by  
177 Subsection 9.31.110(7) and certification as a Provo City Certified Towing or  
178 Parking Enforcement Business, and  
179 (B) the fee schedule required by Subsection (6)(b)(ii) of this Subsection;  
180 (iii) upon request, provides the name and telephone number of the property owner or  
181 owner's agent, and shows the evidence required by Subsection (6)(c)(ii) to:

- 182 (A) a person whose vehicle is subject to the towing or parking enforcement  
183 operation; and  
184 (B) any law enforcement officer;
- 185 (iv) prior to mechanically connecting a vehicle to a tow truck or booting a vehicle,  
186 documents, through the use of date and time-stamped digital photography or digital  
187 video, the precise nature of the violation of the private property parking regulations;  
188 and  
189 (v) upon booting a vehicle, places a notice on the driver's door window which indicates:  
190 (A) in large letters, "This vehicle has been booted";  
191 (B) the name and telephone number of the towing or parking enforcement  
192 business and the name of the person that immobilized the vehicle;  
193 (C) a telephone number, staffed twenty-four (24) hours a day, which the vehicle  
194 owner may call to arrange for release of the vehicle;  
195 (D) applicable fees; and  
196 (E) the following statement: "A person who tows or boots a vehicle unlawfully  
197 may be subject to criminal and civil penalties as provided in Section [9.31.110](#) of  
198 the Provo City Code. A Brigham Young University (BYU) student who believes an  
199 unlawful tow or boot occurred from a BYU approved housing facility may  
200 contact the BYU Student Housing Office to request mediation of the matter. A  
201 person whose vehicle is towed or booted shall be entitled, upon request, to the  
202 name and telephone number of the owner of the property or owner's agent  
203 where the tow or boot occurred."  
204 (vi) upon towing a vehicle, takes the vehicle directly to a storage lot that complies with  
205 the requirements of state law and this Section. Once the vehicle is mechanically  
206 connected to the tow truck the tow operator may only disconnect the vehicle upon  
207 arrival at the storage lot, to release the vehicle to the driver, owner, or owner's agent,  
208 or to abandon the tow and leave the vehicle where the tow operator originally found it.
- 209 (d) Any person conducting a towing or parking enforcement operation of a vehicle located on  
210 private property shall:  
211 (i) maintain the documentation required under subsection 6(c)(iv) for no less than one  
212 year;  
213 (ii) make available, prior to taking payment for the towing or parking enforcement  
214 operation, a copy of the documentation required under subsection 6(c)(iv), upon  
215 request by any of the following:  
216 (A) the driver or owner of the vehicle that was subject to the towing or parking  
217 enforcement operation, or the owner's agent; and  
218 (B) any law enforcement officer; and  
219 (iii) prior to taking any payment related to a towing or parking enforcement operation,  
220 provide the driver or owner of the towed or booted vehicle, or the owner's authorized  
221 agent, with a statement of the owner's rights regarding towing and parking  
222 enforcement operations that has been approved by the Provo City Mayor's Office.
- 223 (7) The written or telephonic request required under Subsection 9.31.110(6)(b)(i) prior to initiating a  
224 towing or parking enforcement operation is not required if all of the following requirements are met:  
225 (a) the towing or parking enforcement business conducting the towing or parking enforcement  
226 operation has been designated as a Provo City Certified Towing or Parking Enforcement Business  
227 by the Mayor, or the Mayor's designee;

228 (i) A licensed towing or parking enforcement business may seek this designation by  
229 completing and signing a written application on a form provided by the City.  
230 (ii) The licensed applicant business shall be granted this designation upon satisfying the  
231 Mayor, or the Mayor's designee, that the applicant's business operations comply with  
232 all of the contractual obligations required under Subsection 9.31.110(7)(c).  
233 (b) the owner of the property where the towing or parking enforcement operation takes place  
234 complies with all the contractual obligations required under Subsection 9.31.110(7)(c); and  
235 (c) the towing and parking enforcement business and the private property owner must have,  
236 and comply with, a contract that contains provisions documenting and requiring all of the  
237 following:  
238 (i) a right of appeal to the property owner by the owner or operator of the vehicle  
239 booted or towed;  
240 (ii) the right of the property owner to grant the appeal and waive part or all of the fees  
241 and charges incurred by the appellant;  
242 (iii) a documented plan for providing adequate visitor parking;  
243 (iv) reasonable, as determined by the Mayor or the Mayor's designee, temporary permit  
244 parking on a 24/7 availability basis for any property where the owner requires permit  
245 parking;  
246 (v) signage that, in the Mayor or Mayor's designee's reasonable opinion, provides fair  
247 notice to all persons of all limitations on parking on the property; and  
248 (vi) a limitation of the towing or parking enforcement operator's total maximum fees  
249 and charges for booting or otherwise immobilizing a vehicle to Sixty Dollars (\$60) and  
250 the total maximum fees and charges for towing a vehicle to One Hundred Seventy-five  
251 Dollars (\$175), including the first day of storage (subsequent days of storage may be  
252 charged in accordance with the rules and rates set forth in Rule R909-19-13, Utah  
253 Administrative Code).  
254 (d) it is a violation of this Section 9.31.110 to conduct a towing or parking enforcement  
255 operation without a written or telephonic request pursuant to this Subsection (7) if either party  
256 to a contract described in subsection (c) fails to comply with a contract provision required under  
257 subsection (c).  
258 (e) appeals by towing or parking enforcement operators or property owners of decisions by the  
259 Mayor, or the Mayor's designee, made under this Subsection (7) may be appealed to a hearing  
260 examiner to be appointed by the Mayor in accordance with Provo City Code 3.06.010.  
261 (8) A booted vehicle may not be removed from the site sooner than two (2) hours after the time of  
262 booting.  
263 (9) Except as otherwise provided in this Section, a towing or parking enforcement business conducting a  
264 towing or parking enforcement operation pursuant to this Section shall release the subject vehicle to its  
265 owner or agent immediately upon payment of applicable fees authorized by this section or by Rule  
266 R909-19, Utah Administrative Code, as amended.  
267 (a) The towing or parking enforcement business shall accept payment offered in cash or by  
268 major credit card, but shall not be obligated to accept checks or payment in coins and shall  
269 maintain sufficient cash on hand to make change of up to forty dollars (\$40.00).  
270 (b) Every towing or parking enforcement business providing services pursuant to this Subsection  
271 shall post in a conspicuous place upon its business premises a true copy of this Section.  
272 (c) A parking enforcement business shall be limited to a maximum booting fee, per vehicle, of  
273 fifty per cent (50%) of the maximum towing rate for non-consent tows as provided in Rule R909-

274 19-12, Utah Administrative Code, and may not charge any other fee for a parking enforcement  
275 operation. If an immobilized vehicle is towed, no fee of any kind relating to booting may be  
276 charged in addition to towing, storage, or other applicable fees. If a vehicle is towed or booted  
277 unlawfully, no fee shall be payable.

278 (d) (i) If the vehicle owner or agent arrives at the vehicle before the towing or parking  
279 enforcement operator has mechanically connected the vehicle to a tow truck or booting  
280 device, the towing or parking enforcement operator shall:

281 (A) not continue to tow or boot the vehicle, and

282 (B) not be entitled to tow or boot the vehicle or to charge any fee whatsoever if  
283 the vehicle is promptly removed from the premises.

284 (ii) If a tow truck is mechanically connected to a vehicle, the tow truck shall be in  
285 possession of the vehicle. If the vehicle owner or agent attempts to retrieve the vehicle  
286 before the vehicle is removed from the property, the maximum towing or parking  
287 enforcement fee shall not exceed fifty percent (50%) of the posted rate schedule.

288 (e) No parking enforcement fee, other than fees authorized by this subsection, shall be charged  
289 as a condition of releasing a booted vehicle.

290 (f) A vehicle shall be released immediately upon payment of any required fees authorized by this  
291 section.

292 (10) Property owners, managers, or their agents shall not receive any consideration whatsoever from  
293 any towing or parking enforcement business in exchange for utilizing such business's services to tow or  
294 boot unauthorized vehicles from the owner's property or for entering into a services agreement with a  
295 towing or parking enforcement business.

296 (11) Any person acting to remove or otherwise disturb any vehicle parked, stalled, or otherwise left on  
297 privately owned or controlled property, and any person owning or controlling such private property, or  
298 either of them, shall be liable to the owner, owner's agent, or driver of a vehicle, or each of them, for  
299 consequential and incidental damages arising from any interference with the ownership or use of such  
300 vehicle which does not comply with the requirements of this section.

301 (12) (a) It shall be unlawful to tamper with or remove from a vehicle a lawfully installed boot without  
302 the authorization of the towing or parking enforcement operator who applied the boot, which  
303 authorization shall not be withheld in violation of state or local law.

304 (b) It shall be unlawful to disconnect a vehicle mechanically connected to a tow truck without  
305 the authorization of the towing or parking enforcement operator lawfully in possession of the  
306 vehicle, which authorization shall not be withheld in violation of state or local law.

307 (c) Violation of this subsection or any subsection or provision of this Section 9.3 1.110 is a Class  
308 B misdemeanor.

309 (13) In addition to any other penalty, a civil action for damages or to abate a violation of this Chapter  
310 may be brought by any aggrieved person.

311 (a) A person who authorizes, tows, or immobilizes a vehicle from private property in violation of  
312 the provisions of this Section is liable in a civil action for a penalty of up to five hundred dollars  
313 (\$500.00) as the court may determine. A civil action under this subsection may not be  
314 commenced later than one hundred eighty (180) days after occurrence of the violation.

315 (b) Lack of compliance with the requirements of Subsections (5), (6) and (7) of this Section shall  
316 be prima facie evidence of a violation of this Section.

317 (c) The remedies provided for in this Subsection shall be cumulative and not exclusive.

318 (d) Nothing in this Section shall preclude prosecution of any crime, including but not limited to,  
319 criminal mischief, fraud, and theft.

320 (14) An entity which employs state-certified law enforcement officers may conduct towing and parking  
321 enforcement operations on the entity's property using the entity's own equipment and personnel so  
322 long as the entity certifies annually in writing to the Provo City business license office that:

323 (a) restricted parking lots on the entity's property are marked and posted in a manner that  
324 notifies parking lot users, in summary form, of parking restrictions and penalties for improper  
325 parking;

326 (b) rules which govern parking lot use, including parking restrictions, parking fees, and penalties  
327 for improper parking, are regularly distributed to occupants and users of the property, and  
328 made readily available to visitors to the property;

329 (c) such rules include appeal and dispute resolution provisions;

330 (d) a person is available twenty-four (24) hours per day who can release an immobilized vehicle;  
331 and,

332 (e) a notice is affixed to each immobilized vehicle indicating how an immobilized vehicle may be  
333 released.

334 (15) Any vehicle located within the City which is subject to non-consensual towing shall be towed to a lot  
335 that:

336 (a) is located within City limits, and

337 (b) complies with state law.

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339 PART II:

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341 A. If a provision of this ordinance conflicts with a provision of a previously adopted  
342 ordinance, this ordinance shall prevail.

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344 B. This ordinance and its various sections, clauses and paragraphs are hereby declared to  
345 be severable. If any part, sentence, clause or phrase is adjudged to be unconstitutional or invalid, the  
346 remainder of the ordinance shall not be affected thereby.

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348 C. The Municipal Council hereby directs that the official copy of the Provo City Code be  
349 updated to reflect the provisions enacted by this ordinance.

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351 D. This ordinance shall take effect on January 15, 2014.

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353 END OF ORDINANCE.